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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARMELITA D. VIRAY,

Plaintiff - Appellant,

v.

ALBERTO J. MORA, Honorable,

Defendant - Appellee.

No. 07-55118

D.C. No. CV-05-01087-GAF

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Gary A. Feess, District Judge, Presiding

Submitted November 13, 2007<sup>\*\*</sup>

Before: McKEOWN, TALLMAN and CLIFTON, Circuit Judges.

Carmelita Viray appeals pro se from the district court's order dismissing her action for lack of subject matter jurisdiction. We have jurisdiction under 28 U.S.C. § 1291. Dismissal for lack of subject matter jurisdiction is reviewed de novo. *See*

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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*Loung v. Circuit City Stores, Inc.* 368 F.3d 1109, 1111 n. 2 (9th Cir. 2004). We affirm.

On April 3, 2004, Viray submitted an administrative tort claim alleging that as a result of being terminated from employment with the United States Department of the Navy, she suffered stress and became disabled on July 14, 1983. Viray alleged in her complaint that her administrative tort claim was wrongfully denied and sought damages in the amount of \$5,000,000.

Because the administrative tort claim was not filed within two years of its accrual, the district court properly dismissed Viray's action. *See* 28 U.S.C. § 2401(b); *see also Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995) (holding that claims not pursued within two years of their accrual, fall outside of the Federal Tort Claims Act's limited waiver of sovereign immunity).

Accordingly, appellee's motion for summary affirmance is granted.

All other pending motions are denied as moot.

**AFFIRMED.**